
APPENDIX A
BNSF and CalTrans Access Agreements



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105

February 12, 2004

Pamela Nehring, Esq.
Senior General Attorney
2500 Lou Menk Drive
Fort Worth, TX 76131-2828

Re: Newmark Groundwater Contamination Superfund Site – Consent to Access by Burlington Northern and Santa Fe Railroad.

Dear Ms. Nehring:

Attached is the Consent to Access by Burlington Northern and Santa Fe Railroad ("BNSF") ("Access Agreement"). In addition to the terms set forth in the Access Agreement, EPA agrees as follows¹:

- (a) EPA shall pay BNSF, within thirty (30) days of the Effective Date, but prior to entering the Premises, the sum of Two Thousand Five Hundred and No/100 Dollars (\$2,500.00).
- (b) EPA agrees to reimburse BNSF within thirty (30) days after receipt of bills therefore for the furnishing of BNSF's Flagman (\$500.00 per eight hour day, \$95.00 per hour thereafter), to the extent a Flagman is required for the installation of the PIPELINE.
- (c) All invoices are due thirty (30) days after the date of invoice. In the event that EPA shall fail to pay any monies due to BNSF within thirty (30) days after the invoice date, then EPA shall pay interest on such unpaid sum from thirty (30) days after its invoice date to the date of payment by EPA at an annual rate equal to (i) the greater of (a) for the period January 1 through June 30, the prime rate last published in The Wall Street Journal in the preceding December plus two and one-half percent (2 ½%), and for the period July 1 through December 31, the prime rate last published in The Wall Street Journal in the preceding June plus two and one-half percent (2 ½%), or (b) twelve percent

¹ All defined terms are as defined in the Access Agreement attached hereto and incorporated by reference.

Pamela Nehring
page 2
February 12, 2004

(12%), or (ii) the maximum rate permitted by law, whichever is less.

Once again, we appreciate your cooperation and assistance in finalizing this Access Agreement. If there are any questions, please do not hesitate to call me at (415) 972-3891.

Very truly yours,

Marie M. Rongone
Senior Counsel

cc: Kim Hoang

CONSENT TO ACCESS BY BURLINGTON NORTHERN AND SANTA FE RAILROAD

THIS Consent to Access is made as of the Effective Date, as defined herein ("Effective Date") by and between **THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY**, a Delaware corporation ("BNSF") and the **UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**, a federal agency ("EPA").

EPA is conducting response actions at the Newmark Groundwater Contamination Superfund Site, Newmark and Muscoy Operable Units, pursuant to Records of Decision for the Newmark and Muscoy Operable Units. The response actions include extraction and treatment of groundwater, and require the installation of a pipeline that will be sited partially on BNSF property, as more specifically described below.

EPA asserts that these actions are undertaken pursuant to EPA's response and enforcement authorities and responsibilities under the Comprehensive Environmental Response Compensation and Liability Act (ACERCLA), 42 U.S.C. Section 9601, et seq. CERCLA Section 104(e), 42 U.S.C. ' 9604(e), provides the authority for EPA to obtain access to property for the purposes stated herein.

ACCORDINGLY, without consent, EPA would have to incur the expense of issuing an order or instating legal proceedings. BNSF consents to access by EPA for the following purposes and based on the following information:

GENERAL

1. BNSF hereby consents to EPA access to BNSF property to construct and maintain, in accordance with the drawings and specifications approved by BNSF submitted by EPA (the "Drawings and Specifications"), 1 Pipe Line(s), 20 inches in diameter inside a 32 inch steel casing ("PIPE LINE"), across or along the rail corridor of BNSF at or near the station of San Bernardino, County of San Bernardino, State of California, Line Segment 7600, Mile Post 80.11 as shown on the attached Drawing No. 1-29122, dated Sept. 25, 2002, attached hereto as Exhibit "A" and made a part hereof ("Premises").
2. EPA shall use its best efforts to not disturb any improvements of BNSF or BNSF's existing lessees, EPAs,¹ easement beneficiaries or lien holders, if any, or interfere with the use of such improvements.
3. EPA shall use the Premises solely for construction and maintenance of a PIPE LINE in accordance with the Drawings and Specifications for the purpose of carrying water. EPA shall not use the PIPE LINE to carry any other commodity or use the Premises for any other purpose.

¹ Note: this term, "EPAs," appears to be in BNSF's original License, but I don't know what it means or if it is a typo.

TERM

4. This Consent to Access shall commence on the Effective Date and shall continue as long as necessary for completion of the response actions. Provided, however, that this Consent to Access does not include consent to abandonment of the PIPE LINE after completion of the response actions.
5. The Effective Date shall be the date this Consent to Access is last executed by either BNSF or EPA.

COMPLIANCE WITH LAWS

6. (a) EPA shall observe and comply with any and all applicable or relevant and appropriate laws, statutes, regulations, ordinances, orders, covenants or restrictions ("Legal Requirements") relating to the construction, maintenance and use of the PIPE LINE and the use of the Premises. Provided, however, that nothing herein shall supersede EPA's authority under CERCLA or the National Contingency Plan ("NCP"), including but not limited to comply with Applicable or Relevant and Appropriate Requirements ("ARARS") in lieu of laws, statutes, regulations, orders, covenants or restrictions.
- (b) Prior to entering the Premises, EPA shall cause its contractor to comply with all of BNSF's applicable safety rules and regulations. Provided, however, that nothing herein shall require EPA or its contractor to conduct the response actions in a manner that is inconsistent with the Records of Decision or the judgment of EPA's Remedial Project Manager.

DEFINITION OF COST AND EXPENSE

7. For the purpose of this Consent to Access, "cost" or "costs" and "expense" or "expenses" include, but are not limited to, actual labor and material costs including all assignable additives, and material and supply costs at current value where used.

RIGHT OF BNSF TO USE

8. BNSF excepts and reserves the right, to be exercised by BNSF and any other parties who may obtain written permission or authority from BNSF:
 - (a) to maintain, renew, use, operate, change, modify and relocate any existing pipe, power, communication lines and appurtenances and other facilities or structures of like character upon, over, under or across the Premises;
 - (b) to construct, maintain, renew, use, operate, change, modify and relocate any tracks or additional facilities or structures upon, over, under or across the Premises; or

- (c) to use the Premises in any manner, as the BNSF in its sole discretion deems appropriate.

Provided that BNSF uses all commercially reasonable efforts to avoid material interference with use of the Premises by EPA for the purpose specified in Section 3 above. BNA shall notify EPA prior to the transfer of all or any portion of the property that contains the PIPELINE.

9. If BNSF desires the use of its rail corridor in such a manner as would, in BNSF's reasonable opinion, be interfered with the PIPE LINE, BNSF and EPA shall meet and confer regarding changes in the PIPE LINE that may be necessary to avoid interference with the proposed use of BNSF's rail corridor, including, without limitation, the relocation of the existing or the construction of a new PIPE LINE.
10. Prior to EPA conducting any boring work on or about any portion of the Premises, EPA shall explore the proposed location for such work with hand tools to a depth of at least three (3) feet below the surface of the ground to determine whether pipelines or other structures exist below the surface, provided, however, that in lieu of the foregoing, the EPA shall have the right to use suitable detection equipment or other generally accepted industry practice (e.g., consulting with the Underground Services Association) to determine the existence or location of pipelines and other subsurface structures prior to drilling or excavating with mechanized equipment. Upon EPA's written request, which shall be made thirty (30) business days in advance of EPA's requested construction of the PIPE LINE, unless BNSF and EPA agree on a shorter time period, BNSF will provide EPA any information that BNSF has in the possession of its Engineering Department concerning the existence and approximate location of BNSF's underground utilities and pipelines at or near the vicinity of the proposed PIPE LINE. Prior to conducting any such boring work, the EPA will review all such material. BNSF does not warrant the accuracy or completeness of information relating to subsurface conditions.
11. The planned boring is greater than ten feet below the bottom of the rail. EPA has prepared a geotechnical report, which has been submitted to BNSF. If BNSF has any comments or concerns related to the geotechnical report, EPA shall meet and confer with BNSF to resolve such comments or concerns. If other borings are planned, EPA shall meet and confer with BNSF concerning any further studies or reports that may be necessary.

EPA'S OPERATIONS

12. EPA shall notify BNSF's Roadmaster, David Gonzales, at 740 E. Carnegie Dr., San Bernardino, California 92408, telephone (909) 322-4464, at least five (5) business days prior to installation of the PIPE LINE and prior to entering the Premises for any subsequent maintenance thereon unless impracticable to do so.

13. (a) EPA shall, at its sole cost and expense, perform all activities on and about the Premises in such a manner as not at any time to be a source of danger to or interference with the existence or use of present or future tracks, roadbed or property of BNSF, or the safe operation and activities of BNSF. BNSF has no duty or obligation to monitor EPA's use of the Premises to determine the safe nature thereof.
14. (b) EPA shall, at its sole cost and expense, construct and maintain the PIPE LINE. EPA intends to construct and maintain the PIPE LINE in such a manner and of such material that it will not at any time be a source of danger to or interference with the existence or use of present or future tracks, roadbed or property of BNSF, or the safe operation and activities of BNSF. BNSF may direct one of its field engineers to observe or inspect the construction and/or maintenance of the PIPE LINE at any time for compliance with the Drawings and Specifications. Notwithstanding the foregoing right of BNSF, the parties agree that BNSF has no duty or obligation to observe or inspect the PIPE LINE, it being solely EPA's responsibility to ensure that the PIPE LINE is constructed in strict accordance with the Drawings and Specifications and in a safe and workmanlike manner in compliance with all terms hereof. Neither the exercise nor the failure by BNSF to exercise any right granted by this Section will cause BNSF to be liable in any manner for EPA's activities on the Premises.
15. During the construction and any subsequent maintenance performed on the PIPE LINE, EPA shall use its best efforts to perform such work in a manner to preclude damage to the property of BNSF, and preclude interference with the operation of its railroad.
16. Any open hole, boring or well constructed on the Premises by EPA shall be safely covered and secured at all times when EPA is not working in the actual vicinity thereof. Following completion of that portion of the work, all holes or borings constructed on the Premises by EPA shall be:
- (a) filled in to surrounding ground level with compacted bentonite grout; or
- (b) otherwise secured or retired in accordance with any applicable Legal Requirement. Provided, however, that nothing herein shall supersede EPA's authority under CERCLA or the NCP to comply with ARARS in lieu of laws, statutes, regulations, orders, covenants or restrictions.
17. EPA's on site supervisors shall retain/maintain a fully executed copy of this Consent to Access at all times while on the Premises.

INSURANCE

EPA will require its contractor, prior to mobilizing at the site, to have its subcontractor obtain all of the insurance required by BNSF, and EPA will provide a certificate of insurance with proof of same to BNSF prior to mobilization. The insurance required by BNSF is the following:

A. **Commercial General Liability Insurance.** This insurance shall contain broad form contractual liability with a combined single limit of a minimum of \$5,000,000 each occurrence and an aggregate limit of at least \$10,000,000. Coverage must be purchased on a post 1998 ISO occurrence or equivalent and include coverage for, but not limited to, the following:

- ♦ Bodily Injury and Property Damage
- ♦ Personal Injury and Advertising Injury
- ♦ Fire legal liability
- ♦ Products and completed operations

This policy shall also contain the following endorsements, which shall be indicated on the certificate of Insurance:

- ♦ It is agreed that any workers' compensation exclusion does not apply to ~~Licensor~~Grantor's payments related to the Federal Employers Liability Act or a ~~Licensor~~Grantor Wage Continuation Program or similar programs and any payments made are deemed not to be either payments made or obligations assumed under any Workers Compensation, disability benefits, or unemployment compensation law or similar law.
- ♦ The definition of insured contract shall be amended to remove any exclusion or other limitation for any work being done within 50 feet of railroad property.
- ♦ Any exclusions related to the explosion, collapse and underground hazards shall be removed.

No other endorsements limiting coverage may be included on the policy.

B. **Business Automobile Insurance.** This insurance shall contain a combined single limit of at least \$1,000,000 per occurrence, and include coverage for, but not limited to the following:

- ♦ Bodily injury and property damage
- ♦ Any and all vehicles owned, used or hired

C. **Contractor hereby agrees to waive any Workers' Compensation subrogation claims, liens, or demands, which could be asserted against Railroad by the Contractor, and further agrees to indemnify and save harmless Railroad and its employees, regardless of Railroad's negligence, for any and all Workers' Compensation subrogation claims, liens, or demands asserted by the Contractor's agents or employees, or the Contractor's insurance carrier.**

- D. **Railroad Protective Liability Insurance.** This insurance shall name only the ~~Licensor~~Grantor as the Insured with coverage of at least \$5,000,000 per occurrence and \$10,000,000 in the aggregate. The coverage obtained under this policy shall only be effective during the initial installation and/or construction of the PIPELINE. **THE CONSTRUCTION OF THE PIPELINE SHALL BE COMPLETED WITHIN ONE (1) YEAR OF THE EFFECTIVE DATE.** If further maintenance of the PIPELINE is needed at a later date, an additional Railroad Protective Liability Insurance Policy shall be required. The policy shall be issued on a standard ISO form CG 00 35 10 93 and include the following:

- ◆ Endorsed to include the Pollution Exclusion Amendment (ISO form CG 28 31 10 93)
- ◆ Endorsed to include the Limited Seepage and Pollution Endorsement.
- ◆ Endorsed to include Evacuation Expense Coverage Endorsement.
- ◆ No other endorsements restricting coverage may be added.
- ◆ The original policy must be provided to the ~~Licensor~~Grantor prior to performing any work or services under this Agreement

In lieu of providing a Railroad Protective Liability Policy, Licensee may participate in ~~Licensor~~Grantor's Blanket Railroad Protective Liability Insurance Policy available to Licensee or its contractor. The limits of coverage are the same as above. The cost is \$1000.00.

- ☐ I elect to participate in ~~Licensor~~Grantor's Blanket Policy;
- ☐ I elect not to participate in ~~Licensor~~Grantor's Blanket Policy.

- E. **Pollution Legal Liability (PLL) Insurance.** This insurance shall be an amount of at least FIVE MILLION DOLLARS (\$5,000,000) per occurrence and TEN MILLION DOLLARS (\$10,000,000) in the aggregate including but not limited to coverage for the following:

- bodily injury, sickness, disease, mental anguish or shock sustained by any person, including death;
- property damage including physical injury to or destruction of tangible property including the resulting loss of use thereof, cleanup costs, and the loss of use of tangible property that has not been physically injured or destroyed;
- defense costs including costs, charges and expenses incurred in the investigation, adjustment or defense of claims for such compensatory damages;
- Coverage shall apply to sudden and non-sudden pollution conditions including the discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste materials or other irritants, contaminants or pollutants into or upon land, the atmosphere or any watercourse or body of water, which results in BODILY INJURY, PROPERTY DAMAGE, or Remediation Expense;

- If coverage is purchased on a "claims made" basis, lessee hereby agrees to maintain coverage in force for a minimum of three years after expiration, cancellation, or termination of this contract. Annually contractor agrees to provide evidence of such coverage as required hereunder;
- Delete any bodily injury exclusions resulting from lead or asbestos;
- Amend the Contractual Liability exclusions and employers liability exclusion to provide coverage for liability assumed under contract;
- Amend the definition of Property Damage to provide coverage for natural resource damage.

Other Requirements:

Where allowable by law, policies (applying to coverage listed above) shall contain no exclusion for punitive damages and certificates of insurance shall reflect that no exclusion exists.

~~Licensee agrees to waive its right of recovery against Licensor for all claims and suits against Licensor. In addition, its insurers~~ Such insurance policies, through policy endorsement, waive their right of subrogation against Licensor Grantor for all claims and suits, including. ~~The certificate of insurance must reflect waiver of subrogation endorsement. Licensee further waives its right of recovery, and its insurers also waive their right of subrogation against Licensor for loss of its owned or leased property or property under its care, custody, or control.~~

Such Licensee's insurance policies through policy endorsement, must include wording which states that the policy shall be primary and non-contributing with respect to any insurance carried by Licensor Grantor. The certificate of insurance must reflect that the above wording is included in evidenced policies.

All policy(ies) required above (excluding Workers Compensation and if applicable, Railroad Protective) shall include a severability of interest endorsement and shall name Licensor Grantor and Staubach Global Services-RR, Inc. as an additional insured with respect to work performed under this agreement. Severability of interest and naming Licensor Grantor and Staubach Global Services-RR, Inc. as additional insureds shall be indicated on the certificate of insurance.

~~Licensee EPA's contractors are~~ is not allowed to self-insure without the prior written consent of Licensor Grantor. If granted by Licensor Grantor, any deductible, self-insured retention or other financial responsibility for claims shall be covered directly by EPA's contractors Licensee in lieu of insurance. Any and all Licensor Grantor liabilities that would otherwise, in accordance with the provisions of this Agreement, be covered by such Licensee's insurance will be covered as if contractor Licensee elected not to include a deductible, self-insured retention or other financial responsibility for claims.

Prior to commencing the Work, EPA Licensee shall furnish to Licensor Grantor an acceptable certificate(s) of insurance including an original signature of the

authorized representative evidencing the required coverage, endorsements, and amendments and referencing the contract audit/folder number if available. The policy(ies) shall contain a provision that obligates the insurance company(ies) issuing such policy(ies) to notify Licensor/Grantor in writing at least 30 days prior to any cancellation, non-renewal, substitution or material alteration. This cancellation provision shall be indicated on the certificate of insurance. Upon request from Licensor/Grantor, a certified duplicate original of any required policy shall be furnished.

Any insurance policy shall be written by a reputable insurance company acceptable to Licensor/Grantor or with a current Best's Guide Rating of A- and Class VII or better, and authorized to do business in the state(s) in which the service is to be provided.

EPA shall cause this Consent to Access to be ~~Licensor/Grantor~~ WARRANTS ~~that this License has been thoroughly reviewed by applicable Licensee's insurance agent(s)/broker(s), who have been instructed by EPALicensee to procure the insurance coverage required by this Agreement. Allocated Loss Expense shall be in addition to all policy limits for coverages referenced above.~~

Not more frequently than once every five years, Licensor/Grantor may reasonably modify the required insurance coverage to reflect then-current risk management practices in the railroad industry and underwriting practices in the insurance industry.

If any portion of the operation is to be subcontracted by EPALicensee, EPA Licensee shall require that the subcontractor shall provide and maintain insurance coverages as set forth herein, naming Licensor/Grantor as an additional insured, ~~and shall require that the subcontractor shall release, defend and indemnify Licensor to the same extent and under the same terms and conditions as Licensee is required to release, defend and indemnify Licensor herein.~~

Failure to provide evidence as required by this section shall entitle, but not require, Licensor/Grantor to terminate this Consent to Access ~~License~~ immediately. Acceptance of a certificate that does not comply with this section shall not operate as a waiver of the Licensee's obligations hereunder.

The fact that insurance (including, without limitation, self-insurance) is obtained by ~~Licensee~~ shall not be deemed to release or diminish the liability of EPALicensee, ~~including, without limitation, liability under the indemnity provisions of this License.~~ Damages recoverable by Licensor/Grantor shall not be limited by the amount of the required insurance coverage.

For purposes of this section, Licensor/Grantor shall mean "Burlington Northern Santa Fe Corporation", "The Burlington Northern and Santa Fe Railway Company" and the subsidiaries, successors, assigns and affiliates of each.

ENVIRONMENTAL

18. (a) EPA shall comply with all applicable or relevant and appropriate federal,

state and local environmental laws and regulations in its use of the Premises, including, but not limited to, the Resource Conservation and Recovery Act, as amended (RCRA), the Clean Water Act, the Oil Pollution Act, the Hazardous Materials Transportation Act, CERCLA (collectively referred to as the "Environmental Laws"). Provided, however, that nothing herein shall supersede EPA's authority under CERCLA or the National Contingency Plan ("NCP"), including but not limited to comply with Applicable or Relevant and Appropriate Requirements ("ARARS") in lieu of laws, statutes, regulations, orders, covenants or restrictions. This Consent to Access does not consent to the operation by EPA or any other person of a treatment, disposal or storage facility for hazardous substances, as defined by Environmental Laws, or for the release of any such hazardous substances at or from the Premises.

- (b) EPA shall give BNSF immediate notice to BNSF's Resource Operations Center at (800) 832-5452 of any release of hazardous substances on or from the Premises, violation of Environmental Laws, or inspection or inquiry by governmental authorities charged with enforcing Environmental Laws with respect to EPA's use of the Premises. EPA shall use the best efforts to promptly respond to any release on or from the Premises. EPA also shall give BNSF immediate notice of all measures undertaken on behalf of EPA to investigate, remediate, respond to or otherwise cure such release or violation.
- (c) EPA shall promptly report to BNSF in writing any conditions or activities upon the Premises related to EPA's construction and maintenance of the PIPE LINE which create a risk of harm to persons, property or the environment and shall take whatever action is necessary to prevent injury to persons or property arising out of such conditions or activities; provided, however, that EPA's reporting to BNSF shall not relieve EPA of any obligation whatsoever. EPA shall promptly respond to BNSF's request for information regarding said conditions or activities.

ALTERATIONS

- 19. EPA is not authorized to make any alterations to the Premises or permanently affix anything to the Premises or any buildings or other structures adjacent to the Premises, other than the PIPE LINE and appurtenant facilities, without BNSF's prior written consent.

NO WARRANTIES

- 20. BNSF'S DUTIES AND WARRANTIES ARE LIMITED TO THOSE EXPRESSLY STATED IN THIS CONSENT TO ACCESS AND SHALL NOT INCLUDE ANY IMPLIED DUTIES OR IMPLIED WARRANTIES, NOW OR IN THE FUTURE. NO REPRESENTATIONS OR WARRANTIES HAVE BEEN MADE BY BNSF OTHER THAN THOSE CONTAINED IN THIS CONSENT TO ACCESS.

QUIET ENJOYMENT

21. BNSF DOES NOT WARRANT ITS TITLE TO THE PROPERTY NOR UNDERTAKE TO DEFEND EPA IN THE PEACEABLE POSSESSION OR USE THEREOF. NO COVENANT OF QUIET ENJOYMENT IS MADE.

DEFAULT

22. If default shall be made in any of the covenants or agreements of EPA contained in this document, or in case of any assignment or transfer of this Consent to Access by operation of law, BNSF may, at its option, terminate this Consent to Access by serving five (5) days' notice in writing upon EPA. Any waiver by BNSF of any default or defaults shall not constitute a waiver of the right to terminate this License for any subsequent default or defaults, nor shall any such waiver in any way affect BNSF's ability to enforce any Section of this Consent to Access. However, nothing in this Consent to Access shall be construed as a limitation on EPA's statutory rights of access under CERCLA.

LIENS

23. EPA is not authorized to cause any liens to be imposed upon the Premises. BNSF is hereby authorized to post any notices or take any other action upon or with respect to Premises that is or may be permitted by law to prevent the attachment of any such liens to Premises; provided, however, that failure of BNSF to take any such action shall not relieve EPA of any obligation or liability.

TERMINATION

24. This Consent to Access may be terminated by BNSF, at any time, by serving thirty (30) days' written notice of termination upon EPA. Upon expiration of the time specified in such notice, this Consent to Access shall absolutely cease. However, nothing in this Consent to Access shall affect EPA's statutory rights of access or property acquisition under CERCLA.
25. If EPA fails to surrender to BNSF the Premises, upon any termination of this Consent to Access, all liabilities and obligations of EPA hereunder, if any, shall continue in effect until the Premises are surrendered. Termination shall not release EPA from any liability or obligation, whether of indemnity or otherwise, resulting from any events happening prior to the date of termination.

ASSIGNMENT

26. Neither EPA, nor the heirs, legal representatives, successors or assigns of EPA, nor any subsequent assignee, shall assign or transfer this License or any interest herein, without the prior written consent and approval of BNSF, which may be withheld in BNSF's sole discretion.

NOTICES

27. Any notice required or permitted to be given hereunder by one party to the other shall be in writing and the same shall be given and shall be deemed to have been served and given if (i) placed in the United States mail, certified, return receipt requested, or (ii) deposited into the custody of a nationally recognized

overnight delivery service, addressed to the party to be notified at the address for such party specified below, or to such other address as the party to be notified may designate by giving the other party no less than thirty (30) days' advance written notice of such change in address.

If to BNSF: Staubach Global Services
5650 N. Riverside Drive, Suite 101
Ft. Worth, Texas 76137
Attn: Licenses/Permits

with a copy to: The Burlington Northern and
Santa Fe Railway Company
2500 Lou Menk Dr. - AOB3
Ft. Worth, Texas 76131
Attn: Director Real Estate

If to EPA: Kim Hoang
Newmark and Muscoy OU Project Manager
U.S. EPA
75 Hawthorne St., SFD-7-4
San Francisco, CA 94105

with a copy to: City of San Bernardino Municipal Water Dept.
195 N. "D" St.
San Bernardino, California 92401

SURVIVAL

28. Neither termination nor expiration will release either party from any liability or obligation under this Consent to Access, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to the date of termination or expiration, or, if later, the date when the PIPE LINE and improvements are removed and the Premises are restored to their condition as of the Effective Date.

RECORDATION

29. It is understood and agreed that this Consent to Access shall not be placed on public record by recordation.

APPLICABLE LAW

30. All questions concerning the interpretation or application of provisions of this Consent to Access shall be decided according to the applicable federal law.

SEVERABILITY

31. To the maximum extent possible, each provision of this Consent to Access shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Consent to Access shall be prohibited by, or held to be invalid under, applicable law, such provision shall be ineffective solely to the extent of such prohibition or invalidity, and this shall not invalidate the remainder of such provision or any other provision of this Consent to Access.

INTEGRATION

32. This Consent to Access and attached letter are the full and complete agreement between BNSF and EPA with respect to all matters relating to EPA's use of the Premises, and supersedes any and all other agreements between the parties hereto relating to EPA's use of the Premises as described herein.

MISCELLANEOUS

33. The waiver by BNSF of the breach of any provision herein by EPA shall in no way impair the right of BNSF to enforce that provision for any subsequent breach thereof.

WAIVER OF SOVEREIGN IMMUNITY

35. BNSF reserves, and this Access Agreement is without prejudice to, claims against the United State, subject to the provisions of Chapter 171 of Title 28 of the United States Code, for money damages for injury or loss of property or personal injury or death caused by negligent or wrongful act or omission of any employee of the United State while acting within the scope of his office or employment under circumstances where the United State, if a private person, would be liable of the claimant in accordance with the law of the place where the act or omission occurred.

Access pursuant to this Agreement is expressly conditioned on its terms which EPA acknowledges and consents to upon entry. BNSF reserves the right to terminate and revoke access at any time and without prior notice to EPA if such terms and conditions are not met.

IN WITNESS WHEREOF, this Consent to Access has been duly executed, in duplicate, by the parties hereto as of the day and year last below written.

**THE BURLINGTON NORTHERN
AND SANTA FE RAILWAY COMPANY**

P.O. Box 961050
Fort Worth, TX 76161-0050

By: _____

Title: _____

**UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY**

75 Hawthorne Street
San Francisco, CA 94105

By: Maui Rong for Kim Hoan

Title: Remedial Project Manager

MISCELLANEOUS

33. The waiver by BNSF of the breach of any provision herein by EPA shall in no way impair the right of BNSF to enforce that provision for any subsequent breach thereof.

WAIVER OF SOVEREIGN IMMUNITY

35. BNSF reserves, and this Access Agreement is without prejudice to, claims against the United State, subject to the provisions of Chapter 171 of Title 28 of the United States Code, for money damages for injury or loss of property or personal injury or death caused by negligent or wrongful act or omission of any employee of the United State while acting within the scope of his office or employment under circumstances where the United State, if a private person, would be liable of the claimant in accordance with the law of the place where the act or omission occurred.

Access pursuant to this Agreement is expressly conditioned on its terms which EPA acknowledges and consents to upon entry. BNSF reserves the right to terminate and revoke access at any time and without prior notice to EPA if such terms and conditions are not met.

IN WITNESS WHEREOF, this Consent to Access has been duly executed, in duplicate, by the parties hereto as of the day and year last below written.

**THE BURLINGTON NORTHERN
AND SANTA FE RAILWAY COMPANY**

P.O. Box 961050
Fort Worth, TX 76161-0050

By: _____

W. P. Schneider
GENERAL DIRECTOR REAL ESTATE

Title: _____

**UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY**

75 Hawthorne Street
San Francisco, CA 94105

By: _____

Title: _____

In compliance with (check one):		Permit No. 08-01-N-UJ-1525	
Your application of <u>DECEMBER 19, 2001</u>		Dist/Co/Rte/PM 08-SBD-215-7.8 (KP12.6)	
		Date MAY 16, 2003	
<input type="checkbox"/> Utility Notice _____ of _____		Fee Paid XXXXX	Deposit \$ EXEMPT
<input type="checkbox"/> Agreement _____ of _____		Bond Amount \$ XXXXX	Bond Number XXXXXX
<input type="checkbox"/> R/W Contract _____ of _____		Bond Company XXXXXX	

USEPA REGION IX - C/O URS GROUP
2520 VENTURA OAKS WAY, SUITE 250
SACRAMENTO, CA 95833-3200
ATTN: DWAYNE DEUTSCHER
(916) 679-2000 X2051

PERMITTEE

and subject to the following, PERMISSION IS HEREBY GRANTED to:

INSTALL PIPELINE TO CONVEY CONTAMINATED WATER FROM THE MUSCOY GROUNDWATER CONTAMINATION SUPERFUND SITE TO A TREATMENT PLANT PER PLANS DATE STAMPED APRIL 2, 2003 BY THE CALTRANS PERMIT OFFICE; AND/OR, AS DIRECTED BY THE STATE'S REPRESENTATIVE.

A PRE-JOB MEETING WITH THE ASSIGNED STATE'S REPRESENTATIVE BOB RUESS (909) 383-6346 IS REQUIRED PRIOR TO START OF ANY WORK UNDER THIS PERMIT! FAILURE TO DO SO MAY RESULT IN PERMIT CANCELLATION AND RESUBMITTAL MAY BE REQUIRED. FURTHER INFORMATION MAY BE ATTAINED FROM THE AREA FIELD SUPERVISOR RAJINDER S. CHHARAN (909) 383-7973.

NOTWITHSTANDING GENERAL PROVISION NO. 4, YOUR CONTRACTOR IS REQUIRED TO APPLY FOR AND OBTAIN AN ENCROACHMENT PERMIT PRIOR STARTING WORK, A FEE/DEPOSIT OF \$ 800.00 IS REQUIRED. PAYMENT AND PERFORMANCE BONDS ARE REQUIRED IN THE AMOUNTS OF \$ 150,000.00 WHICH MUST BE ON CALTRANS FORMS.

PERMITTEE SHALL COMPLY WITH THE APPROVED WATER POLLUTION PREVENTION CONTROL SYSTEM PLAN.

The following attachments are also included as part of this permit (applicable)		In addition to fee the permittee will be billed actual costs for:	
<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	General Provisions	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Review
<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Utility Maintenance Provisions	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Inspection
<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Special Provisions	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Field Work
<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	A Cal-OSHA permit, if required: Permit No:		
<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Storm Water Pollution Protection (PLAN APPROVED)		(if any Caltrans effort expended)
<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	The information in the environmental documentation has been reviewed and considered prior to approval of this permit.		

This permit is void unless the work is completed before JANUARY 1, 2005.

This permit is to be strictly construed and no other work other than specifically mentioned is hereby authorized.

No project work shall be commenced until all other necessary permits and environmental clearances have been obtained.

08-01-N-UJ-1525

RUESS
CORNELIUS/NORTH REGION

APPROVED:



ANNE MAYER, District Director

BY:

Frank J. Haider Jr.

FRANK J. HAIDER JR., P.E., District Permit Engineer (SBD CO)

BR

Collected By	Permit No. (Original) 08-01-N-UJ-1525
Rider Fee Paid \$ EXEMPT	Dist/Co/Rte/PM 08-SBd-215 PM 7.8
Date 11/10/2004	Rider Number 08-04-N-RT-1368

TO:

USEPA REGION IX - C/O URS GROUP, INC.
2520 Ventura Oaks Way, Suite 250 N
Sacramento, CA 95833


, PERMITTEE

in compliance with (your, our) request of November 10, 2004 we are hereby amending the above numbered
encroachment permit as follows: DATE

date of completion extended to: ☐ NO CHANGE ☒ January 1, 2006
DATE

TIME EXTENSION

Except as amended, all other terms and provisions of the original permit shall remain in effect.

COPIES TO: file 1-1525 4-1207 d Garcia M B	APPROVED: Anne Mayer, District Director BY:  Marlin Feenstra, P.E., District Permit Engineer
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